

AMENDMENT NO. 1

TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and INTELLI-FLEX, INC., a California Corporation (“Consultant”) is effective as of the ____ day of _____, 2019.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated October 1, 2016 (“Agreement”) whereby Consultant agreed to provide Avaya software and hardware maintenance and support services.

B. The City and Consultant desired, and the City Council’s action approved, an agreement for a term of three (3) years, for a total Contract Sum not to exceed \$59,610.

C. The Agreement ultimately executed by the parties included a provision that did not conform to the intent of the parties and was inconsistent with the Council’s action.

D. Specifically, Council awarded a three (3) year contract, but the Agreement provided for a one (1) year contract, with the option to renew the term for two additional one-year terms.

E. City and Consultant now desire to amend the Agreement to reconcile the Agreement terms with the City Council’s action.

F. City and Consultant also desire to amend the Agreement to (1) extend the term of the Agreement so that it expires on September 30, 2020, (2) expand the Scope of Services to include Avaya software and hardware maintenance and support services for 12 City parks, and (3) increase compensation by \$43,961.86 to cover the cost of the extended term and services for 12 City parks, for a total Contract Sum not to exceed \$103,571.86.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (new text in ***bold italics*** and deleted text in ~~strikethrough~~).

a. **Section 2.1, “Contract Sum,” shall be amended as follows:**

“Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed ~~Fifty Nine Thousand Six Hundred Ten Dollars (\$59,610.00)~~ ***One Hundred Three Thousand Five Hundred Seventy One Dollars and Eighty Six Cents***”

(\$103,571.86) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8.”

b. Section 3.4, “Term,” shall be amended as follows:

“3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect **from October 1, 2016 through September 30, 2020** ~~until completion of the services but not exceeding one (1) year from the date hereof~~, except as otherwise provided in the Schedule of Performance (Exhibit “D”). ~~City, at its sole discretion, may renew the term for two additional one-year terms.”~~

c. Section I. of Exhibit A, “Scope of Services,” shall be amended to add a new subsection B and to renumber prior subsection B as subsection C as follows:

“B. Consultant will provide Regular Services for all Avaya software and hardware at the following City parks for the term of October 1, 2019 through September 30, 2020:

- 1. Anderson Park***
- 2. Del Amo Park***
- 3. Hemingway Park***
- 4. Dolphin Park***
- 5. Mills Park***
- 6. Scott Park***
- 7. Dominguez Park***
- 8. Veterans Park***
- 9. Stevenson Park***
- 10. Carson Park***
- 11. Calas Park***
- 12. Carriage Crest Park***

B-C. Manufacture Remote Technical Support and Upgrades Coverage (Avaya)

- 1. Remote software and hardware support 24 hours a day, 7 days a week.**

2. Software upgrades and fixes for bugs or software malfunctions.
3. Web Services
 - (a) Avaya E-Notifications
 - (b) Avaya Support Forums
 - (c) Case Status Alerts
 - (d) Diagnostics
 - (e) Knowledge Base
 - (f) My Reports”

d. **Section I. of Exhibit C, “Schedule of Compensation,” shall be amended as follows:**

“I. *Consultant shall perform all Regular Services as follows:*

- A. *For the period of October 1, 2016 through September 30, 2019, Consultant shall perform all Regular Services described in Section I of Exhibit “A,” Scope of Services, for an annual flat fee of \$9,870. The annual fee shall be paid monthly in twelve (12) equal payments of \$822.50, following submission of a monthly invoice, in accordance with Section 2.4 and paragraph III, below.*
- B. *For the period of October 1, 2019 through September 30, 2020, Consultant shall perform all Regular Services described in Section I of Exhibit “A,” Scope of Services, for an annual flat fee of \$33,961.86. The annual fee shall be paid monthly in twelve (12) payments not to exceed \$2,830.16, following submission of a monthly invoice, in accordance with Section 2.4 and paragraph III, below.”*

e. **Section IV. of Exhibit C, “Schedule of Compensation,” shall be amended as follows:**

“The total compensation for Regular Services pursuant to Section I of Exhibit “A,” Scope of Services, for all ~~three (3)~~ **four (4)** years, shall not exceed ~~\$29,610~~ **\$63,571.86**. The total compensation for Ad Hoc Services pursuant to Section II of Exhibit “A,” Scope of Services for all ~~three (3)~~ **four (4)** years, shall not exceed ~~\$30,000~~ **\$40,000**. Thus, the overall total compensation for Regular and Ad Hoc Services for all ~~three (3)~~ **four (4)** years shall not exceed ~~the \$59,610~~ **\$103,571.86**, as provided in Section 2.1 and Section 3.4 of this Agreement.”

f. **Section I. of Exhibit D, "Schedule of Performance," shall be amended as follows:**

"This Agreement shall continue in full force and effect starting on October 1, 2016 and ending on September 30, ~~2017~~**2020**. ~~Each renewal will extend the Services to the same day and month in 2018 and again in 2019.~~ Consultant shall perform all Services timely in accordance with the terms and specifications provided for under the Agreement.

2. **Continuing Effect of Agreement.** Except as amended by this Agreement, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[ndp]

CONSULTANT:

Intelli-Flex, Inc.

By: _____
Name: Jill Williams
Title: Vice President

By: _____
Name: L.W. Whitmier
Title: CEO
Address: Intelli-Flex, Inc.
5696 Corporate Avenue
Cypress, CA 90630

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	_____
_____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	_____ NUMBER OF PAGES
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	_____
_____	_____
SIGNER IS REPRESENTING:	_____ DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))	_____
_____	_____
_____	_____
	SIGNER(S) OTHER THAN NAMED ABOVE

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

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<input type="checkbox"/> CAPACITY CLAIMED BY SIGNER <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	DESCRIPTION OF ATTACHED DOCUMENT _____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE
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